

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. 1332]

Risk-Based Capital Guidelines; Leverage Capital Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule with request for public comment.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Federal Reserve System adopted on September 19, 2008, a special lending facility (ABCP Lending Facility) that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate this Federal Reserve lending program, the Board of Governors of the Federal Reserve System (Board) also has adopted, on an interim final basis, an exemption from its leverage and risk-based capital rules for ABCP held by a state member bank or bank holding company as a result of its participation in this program.

DATES: The interim final rule became effective on September 19, 2008.
Comments must be received on or before October 31, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R-1332, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov> Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov> Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Street, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, or Andrea R. Tokheim, Counsel, (202) 452-2300, Legal Division; Barbara J. Bouchard, Associate Director, (202) 452-3072, or Juan C. Climent, Senior

Supervisory Financial Analyst, (202) 872-7526, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the markets for ABCP and on the operations of money market mutual funds, the Board adopted the ABCP Lending Facility on September 19, 2008. Under the ABCP Lending Facility, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the ABCP Lending Facility is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The ABCP Lending Facility will expire on January 30, 2009 (unless further extended by the Board).

Banking organizations that participate in the ABCP Lending Facility must acquire and hold ABCP on their balance sheet. These ABCP holdings attract leverage and risk-based capital charges under the Board's regulatory capital rules for state member banks and bank holding companies. To facilitate the ABCP Lending Facility, and for the reasons discussed below, the Board has adopted, on an interim final basis, an exemption from its leverage and risk-based capital rules for ABCP purchased by a state member bank or bank holding company as a result of its participation in the facility. Specifically, the interim final rule (i) amends the Board's risk-based capital rules for state member banks and bank holding companies to assign a zero percent risk weight to ABCP purchased by the banking organization as a result of its participation in the facility; and (ii) amends the Board's leverage capital rules for state member banks and bank holding companies to permit banking organizations to exclude from average total consolidated assets – the denominator of the leverage ratio – ABCP purchased by the banking organization as a result of its participation in the facility.

The Board has determined that the current leverage and risk-based capital requirements for ABCP acquired by a banking organization pursuant to the ABCP Lending Facility do not reflect the substantial protections provided to the organization by the Federal Reserve in connection with the facility. Because of the non-recourse nature of the Federal Reserve's credit extension to the banking organization, the organization is not exposed to the credit or market risk of the ABCP purchased by the organization and pledged to the Federal Reserve. Therefore, the Board believes that it would be appropriate – and consistent with the economic substance of the transactions – not to impose regulatory capital requirements on the ABCP purchased by a banking organization in connection with its service as an intermediary in the ABCP Lending Facility.

Consistent with its purpose to mitigate temporary stresses faced by U.S. money market mutual funds, the interim final rule will expire on January 30, 2009, unless extended by the Board.

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. §§ 553(b) and (d)), the Board finds that there is good cause for making the rule effective immediately on September 19, 2008, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate regulatory capital relief to state member banks and bank holding companies that elect to participate in the Federal Reserve's ABCP lending program. The Board is soliciting comment on all aspects of the rule and will make such changes that they consider to be appropriate or necessary after review of any comments received.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. § 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

Pursuant to section 605(b), the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small state member banks and bank holding companies by granting an exemption from the leverage and risk-based capital rules for state member banks and bank holding companies that purchase ABCP from money market mutual funds pursuant to the Federal Reserve's ABCP lending program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. § 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comment on whether it could take additional steps to make the rule easier to understand.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, amend section III.C.1. by adding a new third undesignated paragraph to read as follows:

III.

C.

1.

* * * * *

This category also includes ABCP (i) purchased by a bank between September 19, 2008, and January 30, 2009 (unless extended by the Board), from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) and (ii) pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility established by the Board on September 19, 2008.

3. In appendix B to part 208, amend section II. by inserting new paragraph h to read as follows:

* * * * *

h. Notwithstanding anything in this appendix to the contrary, a bank may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank between September 19, 2008, and January 30, 2009 (unless extended by the Board), from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) and (ii) pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility established by the Board on September 19, 2008.

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PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In appendix A to part 225, amend section III.C.1. by adding a new third undesignated paragraph to read as follows:

* * * * *

III.

C.

1.

* * * * *

This category also includes ABCP (i) purchased by a bank holding company between September 19, 2008, and January 30, 2009 (unless extended by the Board), from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) and (ii) pledged by the bank holding company to a

Federal Reserve Bank to secure financing from the ABCP lending facility established by the Board on September 19, 2008.

3. In appendix D to part 225, amend section II. by inserting new paragraph d. to read as follows:

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d. Notwithstanding anything in this appendix to the contrary, a bank holding company may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank holding company between September 19, 2008, and January 30, 2009 (unless extended by the Board), from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) and (ii) pledged by the bank holding company to a Federal Reserve Bank to secure financing from the ABCP lending facility established by the Board on September 19, 2008.

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By order of the Board of Governors of the Federal Reserve System, September 19, 2008

Jennifer J. Johnson (signed)

Jennifer J. Johnson
Secretary of the Board